

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

IOWA RIGHT TO LIFE COMMITTEE,  
INC.,

Plaintiff,

vs.

TOM MILLER, in his official capacity as  
Iowa Attorney General; W. CHARLES  
SMITHSON, in this official capacity as Iowa  
Ethics and Campaign Disclosure Board  
Executive Director; JAMES ALBERT, JOHN  
WALSH, PATRICIA HARPER, GERALD  
SULLIVAN, SAIMA ZAFAR, and CAROLE  
TILLOTSON, in their official capacities as  
Iowa Ethics and Campaign Disclosure Board  
Members; and JOHN SARCONI, in his  
official capacity as Polk County Attorney,

Defendants.

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Civ. No. 4:10-cv-00416

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MOTION TO DISMISS ON  
BEHALF OF DEFENDANT  
MILLER

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COMES NOW Defendant Miller and files this Motion to Dismiss pursuant to Fed. R. Civ.

P. 12(b)(1) and 12(b)(6) and in support thereof would respectfully show:

**I.**

**THE ELEVENTH AMENDMENT BARS PLAINTIFF'S SUIT AGAINST  
IOWA ATTORNEY GENERAL TOM MILLER**

The Eleventh Amendment immunizes states from suits filed against them without their consent. The Supreme Court has construed the Eleventh Amendment, which by its express terms applies only to actions against states by citizens of other states, to also bar suits in federal court against a state by its own citizens. *Edelman v. Jordan*, 415 U.S. 651, 662-63 (1974). The immunity afforded a state in federal court extends to agencies of the state. *Florida Dep't of Health & Rehabilitative Servs. V. Fla. Nursing Home Ass'n*, 450 U.S. 147, 150 (1981).

An exception to Eleventh Amendment immunity permits suits in federal court against state officials alleged to have violated federal law where the relief sought is only injunctive. *Ex Parte Young*, 209 U.S. 123, 155-58 (1908). However, “[i]n making an officer of the state a party defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional, it is plain that such officer must have some connection with the enforcement of that act. . . .” *Id.* At 157. “General authority to enforce the laws of the state is not sufficient to make government officials the proper parties to litigation challenging the law.” *See Children’s Healthcare is a Legal Duty, Inc. v. Deters*, 92 F.3d 1412, 1416 (6<sup>th</sup> Cir. 1996)(quotation omitted); *see also Okpaboli v. Foster*, 244 F.3d 405, 416 (5<sup>th</sup> Cir. 2001).

Here, Attorney General Miller has been named solely because, “As Iowa Attorney General, Defendant Tom Miller has the power to prosecute criminal violations of Iowa law, including violations of statutory provisions challenged here.” Verified Petition, paragraph 7. Thus, based upon the allegations in Plaintiff’s Verified Complaint, any claims against Attorney General Miller are barred by the Eleventh Amendment.

## II.

WHEREFORE, premises considered Defendant Tom Miller requests that plaintiff’s claims against him be dismissed.

Respectfully submitted,

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**Proof of Service**

The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on September 28, 2010.

☐ U.S. Mail

☐ FAX

☐ Hand Delivery

☐ Overnight Courier

☐ Federal Express

☐ Other

☒ Electronically

Signature: /s/Jeffrey S. Thompson